

# MAINE STATE LEGISLATURE

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# Maine Human Rights Commission



## 2012 Annual Report

*July 1, 2011 - June 30, 2012*

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Amy M. Sneirson  
Executive Director

December 1, 2012

John P. Gause  
Commission Counsel

The Honorable Paul LePage, Governor  
The Honorable Kevin L. Raye, Senate President  
The Honorable Robert W. Nutting, Speaker  
State House, Augusta, Maine 04333

Dear Governor LePage, President Raye and Speaker Nutting:

On behalf of myself, my fellow Commissioners, and the staff of the Maine Human Rights Commission, we are pleased to present you with the 2012 Annual Report of the Maine Human Rights Commission. As you will see by the following, the Commission continues to uphold its statutory charge to enforce Maine's anti-discrimination laws. A few highlights are as follows:

- The number of new complaints that were filed decreased by 16% from the previous year (to 639).
- Of complaints filed, 82.1% were based on employment, 5.8% were based on public accommodations, 11.5% were based on housing, and .6% was based on education.
- With respect to type of allegation, *disability discrimination* represented 35% of complaints filed (up from 34% last year). *Whistleblower* allegations increased to 20.5%. *Sex discrimination* complaints remained at about 12.2% of complaints filed, with sexual harassment claims accounting for 51% of all sex discrimination complaints (a slight increase from the year prior). *Race/color/national origin/ancestry* allegations constituted 8.6% of complaints filed. *Sexual orientation* allegations comprised 2% of complaints filed.
- 265 cases were listed on Commission agendas. 52% were uncontested and listed on the consent agenda. Commissioners heard argument in 126 cases. The Commission found reasonable grounds to believe discrimination occurred in 15% of the cases (a decrease from the prior year's rate of 24%).
- The number of complaints closed increased by nearly 15% from the previous year.
- At the end of FY 2012, 746 cases were pending in our inventory. The number of pending cases decreased 8.7% from the previous year (from 817 to 746).

The staff and Commissioners also participated in more than 36 training forums during FY 2012. Additionally, in 2012, we welcomed Commissioners Clark and Whitworth, and Executive Director Sneirson, to the Commission.

On behalf of my fellow Commissioners, we pledge our continued commitment to the promotion of diversity, tolerance, and to ensuring basic human rights for all Maine citizens and visitors to our wonderful state. We certainly look forward to continuing our strong relationship with the Executive and Legislative branches to assure the citizens of Maine the basic protections afforded under the Maine Human Rights Act.

Sincerely,

Paul K. Vestal  
Chairman of Maine Human Rights Commission

## THE COMMISSION

The Maine Human Rights Commission is the state agency charged with responsibility of enforcing Maine’s anti-discrimination laws. The Commission investigates complaints of unlawful discrimination in employment, housing, education, access to public accommodations, extension of credit, and offensive names. The Commission attempts to resolve complaints of discrimination to the mutual satisfaction of those who are involved. The Maine Human Rights Act authorizes the Commission to pursue remedies for unlawful discrimination in court when necessary to enforce the Act.

The Commission was established in 1971 and has jurisdiction over allegations of discrimination in the following areas:

### AREAS OF JURISDICTION

EMPLOYMENT	HOUSING	ACCESS TO PUBLIC ACCOMMODATION	CREDIT EXTENSION	EDUCATION
Race	Race	Race	Race	Race
Color	Color	Color	Color	--
Sex	Sex	Sex	Sex	Sex
Sexual Orientation	Sexual Orientation	Sexual Orientation	Sexual Orientation	Sexual Orientation
Physical disability	Physical disability	Physical disability	--	Physical disability
Mental disability	Mental disability	Mental disability	--	Mental disability
National Origin	National Origin	National Origin	National Origin	National Origin
Ancestry	Ancestry	Ancestry	Ancestry	--
Religion	Religion	Religion	Religion	--
Age	--	--	Age	--
Workers’ Comp Retaliation	Receipt of public assistance	Children (lodging only)	Marital Status	--
Whistleblower Retaliation				
	Familial Status	--	--	--
Genetic Information	--	--	--	--

Below is a timeline of some of the most significant additions to the Maine Human Rights Act.

- 1972** Race, Color, National Origin, Ancestry, Religion, Age
- 1973** Sex, Marital Status (Credit)
- 1974** Physical Disability
- 1975** Mental Disability, Source of Income (Housing)
- 1979** Pregnancy
- 1981** Familial Status (Housing)
- 1987** Workers’ Comp Retaliation (Employment)
- 1988** Whistleblowers’ Retaliation (Employment)
- 1998** Genetic Information
- 2005** Sexual Orientation

Commission policy is formulated by five Commissioners appointed by the Governor for staggered five year terms. Commissioners make the final determination on all discrimination complaints that are investigated by Commission staff and not otherwise settled, withdrawn, administratively dismissed, or subject to a “right to sue” request. The Governor designates the Chair of the Commission from among its members.

Section 4566 of the Maine Human Rights Act outlines the powers and duties of the Commission. These include the following:

- to investigate all conditions and practices within the state which allegedly detract from the enjoyment, by each inhabitant of the state, of full human rights and personal dignity;
- to investigate all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons; and
- to recommend measures calculated to promote full enjoyment of human rights and personal dignity.

#### **STAFFING AND BUDGET**

The Commission appoints an Executive Director. The Executive Director in turn has the authority to appoint and supervise the Commission’s staff. The Commission has four major divisions:

- **Investigation**  
The Investigation Division is responsible for all aspects of case investigation, which includes fact-finding as to whether allegations are legally sufficient to constitute a claim of discrimination under the Maine Human Rights Act, and writing Investigator’s Reports that analyze facts and apply legal principles to recommend specific findings to the Commission. We have five full-time investigators.
- **Compliance**  
The Compliance Division – a division of one – is responsible for all settlement efforts of the agency. Compliance has direct responsibility for negotiating conciliation agreements after Commission findings of reasonable grounds and monitoring of agreements to ensure that terms are met. The Compliance Manager conducts pre-determination resolution efforts herself, and also reviews and monitors pre-determination settlement agreements facilitated by neutral mediators or investigators. The Compliance Manager also provides technical assistance to employers in reviewing Affirmative Action Plans and personnel policies and is involved in the public education efforts of the Commission. We have one Compliance Manager who works 2/3 time.
- **Legal**  
This Division – also a division of one – is responsible for litigation on behalf of the Commission (and the public interest) as well as providing legal advice to the staff and Commission. The Commission Counsel reviews all Investigator’s Reports for legal sufficiency, provides legal opinions to the Executive Director or Commission, drafts legislation and proposed regulations, litigates cases, and advises the Executive Director on contract matters involving governmental agencies and private parties. We have one Commission Counsel.
- **Administration**  
The Administration Division is the division responsible for the effective operation of the office. Responsibilities include all personnel functions along with budget and other fiscal duties. Support is provided to other Divisions. This would include our Executive Director, two Office Associates, an Intake Officer, and a Personnel Specialist (Information Technology, Human Resources, Finance).

## BUDGET

The Maine Human Rights Commission's fiscal year 2012 budget appropriation was \$947,021. Of that total, approximately \$427,429 came from federal funds under worksharing agreements with the Equal Employment Opportunity Commission and the U.S. Department of Housing & Urban Development.

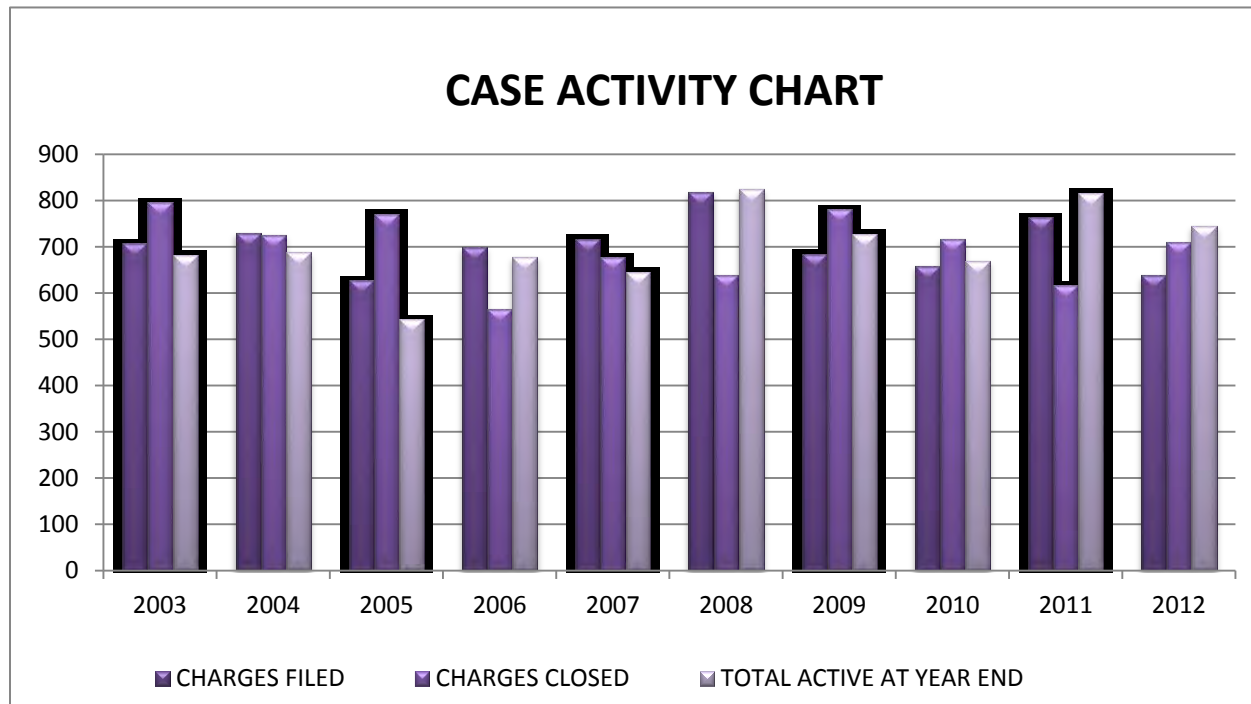
Approximately 86.8% of the agency's budget was allocated to fixed costs such as salaries and benefits. This is due to the highly personnel-intensive nature of the Commission's work in investigating, resolving, and litigating complaints.

## CASE ACTIVITY

During the last fiscal year, six hundred thirty-nine (639) new complaints were filed, which represents a decrease from the previous year. A total of one thousand two hundred twenty-two (1,272) bases were named in these complaints, representing more complex investigations in many cases. Seven hundred and ten (710) cases were closed during the same time period. The pending inventory of cases has decreased by 8.7% since last fiscal year.

### CASE ACTIVITY FY 2003 – 2012

FISCAL YEAR	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
PREVIOUS YEAR TOTAL	771	683	688	544	679	646	826	729	670	817
COMPLAINTS FILED	708	731	628	700	718	819	685	659	764	639
CASES CLOSED	796	726	772	565	678	639	782	718	617	710
TOTAL	683	688	544	679	646	826	729	670	817	746



**COMPLAINTS FILED**

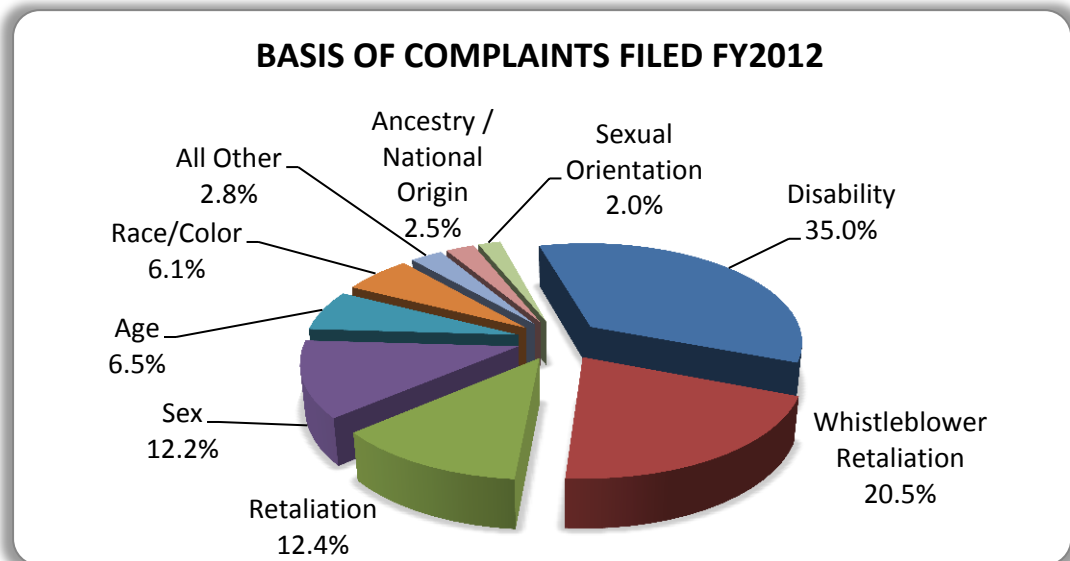
As in past years, the Commission continued to devote the majority of its resources to the processing of complaints of discrimination filed with it.

- 639 new complaints were filed.
- Nearly 82.1% of these new complaints alleged discrimination in employment.
- The largest number of complaints that were filed based on disability (35%).
- The second and third largest numbers of complaints filed were based on whistleblower retaliation (20.5%) and retaliation (12.4%).
- Disability, whistleblower, and retaliation comprised 67.9% of the complaints filed.
- Complaints alleging sex discrimination were the 4th largest category of complaints (12.2%), followed by
  - Age (6.5%)
  - Race/Color (6.1%)
  - Other (familial status, source of income) (2.8%)
  - Ancestry / National Origin (2.5%)
  - Sexual Orientation (2.0%)

Of the sex discrimination complaints filed, seventy (79) alleged sexual harassment. This number comprised 51% of the total of sex discrimination complaints.

**BASIS OF COMPLAINTS FILED SUMMARY FISCAL YEAR 2012**

BASIS	# ALLEGATIONS
Disability	445
Whistleblower Retaliation	261
Retaliation	158
Sex	155
Age	83
Race/Color	77
Ancestry / National Origin	32
Sexual Orientation	25
All Other	36
<b>TOTAL ALLEGATIONS</b>	<b>1272</b>



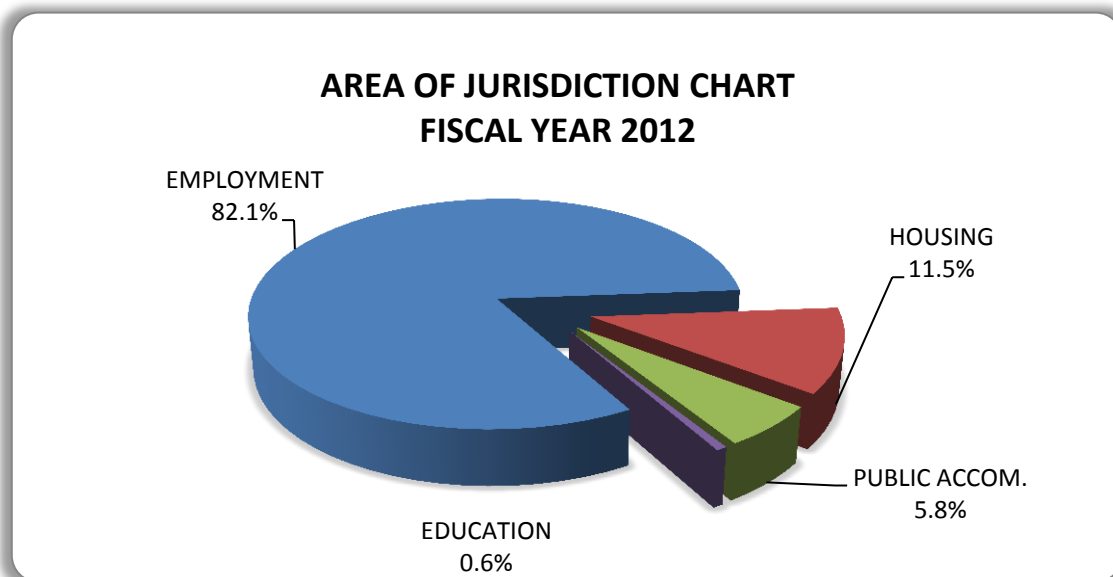


### COMPLAINTS FILED BY BASIS FY 2003 - 2012

BASES	FY:	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
DISABILITY		320	306	281	308	346	467	450	438	450	445
WHISTLEBLOWER		151	167	138	143	147	201	180	197	235	261
RETALIATION		91	72	68	98	98	147	56	96	109	158
SEX		262	258	201	236	207	196	149	147	152	155
AGE		82	95	75	66	94	97	60	75	109	83
RACE / COLOR		82	64	60	64	88	113	123	101	132	77
ANCESTRY / NATIONAL		42	38	43	40	43	106	51	35	51	32
SEXUAL ORIENTATION		N/A	N/A	N/A	13	33	32	19	50	45	25
FAMILIAL STATUS		14	6	14	19	13	6	19	22	21	21
RELIGION		13	18	15	10	16	25	15	20	23	13
SOURCE OF INCOME		7	15	10	16	8	9	10	10	10	2
MARITAL STATUS (Credit		0	0	0	0	0	0	0	0	0	0
WORKERS' COMP		5	2	4	1	3	0	0	0	0	0
GENETIC INFORMATION		0	0	0	0	1	0	0	0	0	0
TOTAL ALLEGATIONS		1069	1041	909	1014	1097	1399	1132	1191	1337	1272

### COMPLAINTS FILED BY JURISDICTION FY 2003 - 2012

JURISDICTION	FY:	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EMPLOYMENT		590	613	516	503	544	604	653	492	618	528
HOUSING		53	69	75	136	114	59	122	113	78	74
PUBLIC ACCOMMODATION		58	43	34	49	54	142	64	52	72	37
EDUCATION		7	7	4	12	6	11	10	9	4	4
CREDIT EXTENSION		0	0	0	1	1	1	0	0	0	0
OFFENSIVE NAMES		0	0	0	0	0	2	0	0	0	0
TOTALS		708	731	628	700	718	819	849	666	772	643



## **CASES CLOSED**

Seven hundred and ten (710) complaints of discrimination were investigated and closed during the last fiscal year.

### **Merit Closures**

Merit closures are closures in which either a determination was made that there were reasonable grounds to believe that unlawful discrimination had occurred or cases in which the complainant received some benefit from the respondent prior to a determination on the merits of the complaint. Merit closures include reasonable grounds determinations, with successful and unsuccessful conciliations; pre-determination settlements; and withdrawals with benefits accruing to the complainant.

During the last fiscal year, there were two hundred and twenty-five (225) cases closed which were reasonable grounds cases or cases that provided benefits to complainants.

The Commission encourages voluntary settlement and is willing to work with the parties to achieve a resolution that is acceptable. Cases may be resolved at any time while they are before the Commission by means of a settlement. Prior to a Commission vote on whether discrimination occurred, voluntary resolutions that are “merit closures” provide a benefit to the complainant via a settlement agreement and/or withdrawal of complaint. The pre-determination agreement can be one which a Commission investigator, Compliance Manager or neutral mediator facilitated, or not. Some parties reach settlements independent of the Commission, in which cases the complainants choose to withdraw their complaints. During the last fiscal year, one hundred and eighty-six (186) cases were settled prior to a finding by the Commission. The monetary value of these settlements amounted to \$2,335,942 for complainants. It should be noted that in addition to monetary awards, settlements often include such non-monetary, equitable relief as an offer of a job or housing unit, modifications providing accessibility, reinstatement, attorney’s fees, cleared personnel records, policy modifications, letters of recommendation, and non-retaliation provisions.

After a Commission finding of reasonable grounds, a resolution that is a “merit closure” can occur by negotiated agreement, either with or without Commission participation. If the parties reach resolution and the Commission also reaches agreement on public interest relief, this is a formal document prepared by the Commission and signed by both parties and a representative of the Commission; terms are monitored by the Commission’s Compliance Division. If the parties reach a resolution of a post-reasonable grounds case, but do not include the Commission in the agreement, the Commission determines whether to pursue relief in the public interest on its own. During the last fiscal year, there were eleven (11) successful conciliations of the thirty-nine (39) reasonable grounds determinations. The Maine Human Rights Act requires the Commission to undertake formal conciliation efforts in all cases in which it is determined that reasonable grounds exist to believe that unlawful discrimination has occurred. The monetary value of these conciliations was \$480,520. Total monetary relief for merit closures was \$2,816,462.

### **Administrative Dismissals**

Cases can be administratively dismissed for several reasons prior to a Commission determination. Complainants may choose to **withdraw** their complaints of discrimination. Withdrawals most often occur when complainants, after hearing the facts presented by respondents at a fact finding conference, or reviewing the respondents’ written answers to the complaint, decide that they do not wish the Commission to continue processing their case any longer. Thirty (30) complaints were withdrawn during the last fiscal year.

Complainants may also obtain “**Right-To-Sue**” letters from the Commission after 180 days from the filing of a complaint. If the Commission issues a Right-To-Sue letter, the case is closed and the complainant can file a lawsuit in court. One hundred and forty-seven (147) Right-To-Sue letters were issued in the last fiscal year.

Other cases are **administratively dismissed** by the Executive Director for such reasons as lack of jurisdiction, failure by the complainant to cooperate with the investigation, or failure by the complainant to substantiate a complaint. Eighty-five (85) cases were closed during the last year for such reasons.

### WITHDRAWALS AND DISMISSALS FOR FY 2012

TYPE	NUMBER
COMPLAINT WITHDRAWN	30
RIGHT TO SUE	147
FAILURE TO COOPERATE/PROCEED	74
NO JURISDICTION	5
OTHER	6
<b>TOTAL</b>	<b>262</b>

#### Non merit closures

In addition to cases closed finding reasonable grounds and/or providing some remedy to the complainant, and cases administratively dismissed, two hundred twenty-six (226) cases were dismissed after a finding that no reasonable grounds existed to believe that unlawful discrimination had occurred.

#### Commissioner determinations

If a case cannot be settled, the complainant does not withdraw, or the matter is not administratively dismissed, a report is prepared by the Investigator assigned to the complaint and a recommendation is made to the Commission as to whether reasonable grounds exist to believe that unlawful discrimination occurred.

Two hundred and sixty-five (265) cases came before the Commission in fiscal year 2012 for a determination. In one hundred and thirty-nine (139) cases, neither party submitted a written objection to the Investigator’s recommendation, and the cases were placed on the Commission’s Consent Agenda. In those cases, Commissioners adopted the recommendation of the Investigator without argument.

The remaining cases were heard by the Commissioners at public meetings. In thirty-nine cases, the Commission found reasonable grounds to believe that unlawful discrimination had occurred; this represents 15% of the cases the Commission considered. The Commission found no reasonable grounds to believe that unlawful discrimination occurred in one hundred and forty-nine (149) cases. Not all cases in which the Commission makes determinations are closed within the same fiscal year. Cases in which the Commissioners find reasonable grounds continue through a conciliation process. The above figures represent cases considered by the Commission in fiscal year 2012. The figures following represent cases actually closed during fiscal year 2012.

### SUMMARY OF CASE CLOSURES FOR FY 2012

CASES CLOSED FY 12	MERIT CLOSURES: 31.6%			NO RG DETERMINATIONS 31.7%	WITHDRAWALS & DISMISSALS 36.7%
	SETTLEMENTS	SUCCESSFUL CONCILIATIONS	UNSUCCESSFUL CONCILIATIONS		
<b>713</b>	186	11	28	226	262

## **LITIGATION**

The Maine Human Rights Act authorizes the Commission to file a lawsuit in Superior Court in the name of the Commission, for the use of the complainant, in cases where reasonable grounds are found to believe that unlawful discrimination has occurred, and where conciliation has failed. The Commission Counsel makes recommendations to the Commission in each post-reasonable-grounds cases in which conciliation has failed to assist the Commission in deciding whether to file a lawsuit in each case.

During Fiscal Year 2012, the Commission directed Counsel to file complaints or amicus curiae briefs in six cases on behalf of the Commission. Six cases were resolved that had been referred to Counsel for litigation or amicus filings. The Commission was a party or amicus curiae in twelve court cases throughout the year. At the end of Fiscal Year 2012, there were five cases pending in court in which the Commission was a party or amicus curiae. Commission Counsel represents the Commission in litigation matters.